

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In re the Matter of)

Negotiated Channel Exchange Arrangement)
Little Rock and Pine Bluff, AR)

FCC File No. 20050210ATW

Second Periodic Review of the)
Commission's Rules and Policies)
Affecting the Conversion)
To Digital Television)

MB Docket No. 03-15

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OPPOSITION TO JOINT PETITION FOR RECONSIDERATION

The Arkansas Educational Television Commission (AETC), licensee of noncommercial educational (NCE) television Station KETS-DT, Little Rock, Arkansas hereby opposes the "Joint Petition for Reconsideration (Joint Petition)" filed July 8, 2005 by Agape Church, LLC (Agape), licensee of Station KVTN(TV), Pine Bluff, AR and KATV, LLC (KATV), licensee of Station KATV(TV), Little Rock (collectively, "Petitioners"). Petitioners do little more than reargue their position taken earlier in the proceeding regarding the procedures established by the Commission for negotiated channel election arrangements (NCAs) as part of the first round election by qualified DTV licensees for preferred DTV channels. The Acting Chief, Media Bureau properly rejected the Agape-KVTN NCA because Petitioners failed to obtain AETC's consent to the NCA.¹ Those facts have not changed. Accordingly, AETC urges the Commission to deny the Joint Petition.

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¹ Report and Order in the Matter of Negotiated Channel Election Arrangements (MM Docket No. 03-15) (NCA Report and Order), DA 05-1619, released June 8, 2005, para. 13.

The Bureau Properly Rejected the Agape-KATV NCA. In the NCA Report and Order the Bureau approved 25 NCAs by licensees which had correctly followed the Commission's stated procedures and rejected 12 channel election proposals where the parties, like Agape and KATV, failed to follow those procedures or otherwise presented interference to licensees not a party to an NCA. The Petitioners argue, as they had in their "Reply to Objection to Negotiated Channel Exchange Arrangement (filed March 22, 2005)" that the Commission's procedures for NCAs did not require securing consent from all affected licensees. In support of this argument, Petitioners point to a single instance where the Bureau approved an NCA despite an objection from a station which was not a party to an NCA.

Petitioner's arguments ignore the facts and invent a policy which they would prefer, but one which has not been promulgated by the Commission – that consent of all affected stations is required only where a station was proposing a channel not otherwise assigned in the market (Petition, p. 3). The Commission clearly stated that it would review NCAs for adverse impact on any stations not part of the NCA.² The Bureau followed that directive in rejecting other NCAs against which protests were lodged (Philadelphia, Pennsylvania and Orlando, Florida).

As for the single instance of the FCC denying an objection and granting the NCA (Vancouver, Washington), the station which filed the objections was located 240 miles and two mountain ranges away from the stations in the NCA. The objecting station had failed to demonstrate an adverse impact from the channel changes proposed in the NCA. Clearly, AETC as a two low-band VHF channel licensee has the same interests

² Public Notice "DTV Channel Election Issues - Negotiated Channel Arrangements, Establishment of Form 382 Mailbox, Revisions to FCC Form 381 Certifications, and Notification to FCC of Flash Cut Decisions," DA 05-273, released February 1, 2005.

as a two out-of-core licensee, and so the impact on it by removing Channel 7 as a choice it may make is clear.³

KVTN-KATV also reargue their assertion that AETC is not adversely affected by KVTN's election of Channel 7 because another high-band VHF channel is available for Station KETS. There is clearly no guarantee that Channel 10, which has never been allotted to the Little Rock market, is or will be available.⁴ Under these circumstances, the Bureau clearly and correctly determined that the adverse affect on AETC from the NCA was the result of the reduction of the number of "desirable, already allotted channels...in this market and adjacent markets...", Report and Order, para. 12. By contrast, it should be stressed that, without their NCA, Agape and KATV have desirable in-core DTV allotments. *The public interest compels rejection of the Petition.*

³ In a footnote, Agape and KATV state that "it is worth noting that KETS was initially assigned in-core DTV Channel *47" which was changed through rulemaking at AETC's request to substitute Channel *5. (Petition, footnote 1). As the Commission understands, in the year 2000, that channel seemed a good choice. Obviously the experience of the broadcast industry since then has indicated that low-band VHF might be unusable in many places for DTV, which is why the FCC has permitted two-low band channel licensees like AETC to seek alternative channel designations. Second DTV Periodic Review Report and Order ("Second DTV Review"), 19 FCC Rcd 18,279, para. 63 at fn.129 (2004); "Instructions for FCC 382," p.2.

⁴ In further support of the argument that AETC might use Channel 10 for Station KETS, Agape and KATV submit a single-page "Engineering Statement" which asserts that only Station KETS-TV is eligible for participation in Round Two channel elections for the Little Rock-Pine Bluff market. The assertion is irrelevant to the facts as to whether the Petitioners followed the procedures established by the Commission for NCAs. Moreover, AETC's engineering consultant has examined the database and has determined there are 10 other stations within 429 kilometers of KETS that did not make a DTV channel selection in round one. At this time no one could predict how round two selections by those stations might affect the availability of the channel 10 in the Little Rock-Pine Bluff market.

WHEREFORE, for the foregoing reasons, AETC respectfully requests that the Joint Petition of Agape and KATV be denied.

Respectfully submitted,

ARKANSAS EDUCATIONAL TELEVISION
COMMISSION

By: 
Steven C. Schaffer

By: 
Malcolm G. Stevenson

CERTIFICATE OF SERVICE

I, Mary Kay McMahon, Secretary in the law offices of Schwartz, Woods & Miller, do hereby certify that I have on this 20th day of July, 2005, sent by overnight courier, copies of the foregoing **OPPOSITION TO JOINT PETITION FOR RECONSIDERATION** to:

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• By Hand